

LICENSED CHILD PLACING AGENCY CONTRACT

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This contract ("Contract") is entered into by and between the Indiana Department of Child Services (hereinafter "Department" or "State"), on behalf of the Department and each local office of the Department established under Indiana Code (IC) 31-25-1 et seq. (hereinafter "Local Office"), and _____, an Indiana corporation or other business organization having its principal office at _____ (hereinafter "Contractor"), under the terms and conditions set forth herein.

Section 1. Recitals: Purpose, Funding and Definitions

- A. The purpose of this Contract is to provide a standard form of agreement, terms and conditions applicable to licensed child placing agencies ("LCPA") licensed under IC 31-27-6 et seq. and licensing regulations of the Department, including 465 IAC 2-2-1 through 2-2-12 for care and treatment services provided to children:
- (1) for whom the Department, a Local Office, or a juvenile court probation department is responsible for care and supervision, pursuant to orders entered by a juvenile court or otherwise, and
 - (2) who are placed by the Department, a Local Office, or a juvenile court probation department with a LCPA for placement in a foster home for temporary care and treatment in accordance with an individual child placement agreement ("ICPA"), Individual Case Plan (as defined below herein) and Treatment Plan (as defined below herein).

This Contract may also apply to children placed with Contractor for services pursuant to a voluntary placement agreement described in IC 31-34-1-16(b).

- B. Funding for services to children under this Contract will be provided by the Department, with financial assistance for eligible children for eligible services through the Indiana Medicaid program (IC 12-15 and applicable regulations in 405 IAC) and/or Title IV-E of the federal Social Security Act, 42 U.S.C. 670 et seq. In certain cases, funding may be provided through the children's psychiatric residential treatment services fund as part of the Indiana Medicaid program in accordance with 405 IAC 1-21.
- C. The Department is responsible for providing and administering child services (as defined in IC 31-25-2 et seq.). Child services include services specifically provided for children who are adjudicated to be children in need of services or delinquent children.

In consideration of the mutual undertakings, terms and conditions stated herein, the Department and Contractor agree as follows:

Definitions

- A. **Emergency Placement** is defined as placement of a child with Contractor with less than one (1) full business day notice, or any placement that occurs on weekends, state holidays or after 5:00 p.m.
- B. **Individual Case Plan ("Case Plan")** is defined as the Case Plan required under IC 31-34-15 et seq. and, as stipulated in IC 31-34-15-2, the Department shall complete a child's Case Plan not later than sixty (60) days after: (1) the date of the child's first placement; or (2) the date of a dispositional decree. Nothing in this Contract will require the Case Plan to be completed and/or provided to the Contractor within a time frame that is less than the sixty (60) days permitted in IC 31-34-15-2. However, if the Case Plan is completed and available within an earlier time frame, it will be provided to the Contractor.
- C. **Individual Child Placement Agreement ("ICPA")** is defined as the child specific placement agreement that details the specific services to be rendered by the Contractor and the Contractor's established and approved rates in the current **Attachment 1** to this Contract (which is hereby incorporated by reference, although the most current **Attachment 1** at the relevant time will control). The required ICPA is attached as **Attachment 2** (which is hereby incorporated by reference).
- D. **Initial Clothing Allotment** is defined as the dollar amount, up to two hundred dollars (\$200), that is to be paid to Contractor for use by the foster parent when the child is initially removed from his/her home and placed with Contractor. Additional monies needed for the Clothing Allotment upon transfer of a child may be negotiated.
- E. **Licensed Child Placing Agency ("LCPA")** is defined as an agency that provides child welfare services to children and families, including:
- (1) home studies, investigation, and recommendation of families for the purpose of placing, arranging, or causing the placement of children for adoption, foster care, or residential care; and
 - (2) supervision of those placements.
- However, the LCPAs will not be providing adoption or residential services under this Contract.
- F. **Placing Agency** shall be defined as any of the following public agencies that has primary responsibility for the out-of-home placement, care, and supervision of a child placed with Contractor:
- (1) The Department;
 - (2) A Local Office; or

- (3) A juvenile court probation department (IC 31-31-5).
- G. **Planned Placement** is defined as a placement, other than an Emergency Placement, of a child with Contractor with sufficient prior notice of at least one (1) full business day.
- H. **Probation Department** is defined as the probation department of a court with jurisdiction over a child placed with Contractor under this Contract.
- I. **Treatment Plan** is defined as a goal-oriented, time-limited, individualized program of action for a child, developed by the Contractor in cooperation with the Placing Agency.
- J. **Community Based Services**, for purposes of this Contract, are those services available under a Department service standard, which are not included under Section 2.B. or Section 2.C. of this Contract (with the exception of Section 2.B.(5) of this Contract which does include Community Based Services).

Section 2. Duties of Contractor

A. Services Provided

- (1) The service definitions for the various service categories for foster homes that Contractor provides for placement of children, including all applicable licensing categories, and the individual services that Contractor offers for children residing in its homes under each applicable licensing category, are stated in **Attachment 1** (which is attached hereto and incorporated in this Contract, although the most current **Attachment 1** at the relevant time will control).
- (2) The services provided for each individual child placed with Contractor through the Department or other Placing Agency will be stated and described in an ICPA signed by Contractor and the Department at the time the child is placed with Contractor. The form of ICPA that will be used for individual placements during the term of this Contract is attached hereto as **Attachment 2**. The Contractor will notify the Placing Agency of the need to renegotiate the ICPA if there is a change in the services required by the child.
- (3) The program and services that Contractor provides to a child under this Contract and the ICPA must be consistent with all terms and provisions of any Case Plan prepared for the child, or any other written Case Plan for the child that is in effect at the time of placement, and any modifications to the Case Plan that are made while the child is placed with Contractor.
- (4) The Contractor acknowledges that applicable laws and the Department's practices and policies are subject to change and that the Department and the Contractor need to apply consistent standards in placing children. The Department will provide written notice to Contractor of any new policies or changes in current policies that have been adopted by the Director of the Department, and include such notice on its website at <http://www.in.gov/dcs/>. Contractor shall have thirty (30) days following the written notice to evaluate the Department's policies and develop a plan for compliance with a

reasonable time period for implementation and negotiation of rate revisions, if necessary. After the planned implementation period, Contractor will at all times maintain compliance with all policies and practices of the Department that are not in conflict with specific terms or conditions stated in this Contract. In addition, during the term of this Contract, and with respect to all services and programs provided to a child placed with Contractor by the Department or Placing Agency pursuant to an ICPA, Contractor will at all times maintain compliance with all laws, and the rules and regulations of the Department applicable to Contractor's licensing category or categories as stated in **Attachment 1**. Compliance with these policies extends to the Department's policy on the scope of the per diem and the appropriate use of any personal allowance for which Contractor seeks reimbursement.

- (5) The Contractor further acknowledges that any Community Based Services, as defined above, will require a service referral separate from this Contract and that any such service referral must be approved by the Regional Manager or his/her designee, with the exception of home-based family centered therapy services and counseling-individual/family which can be approved by the local office director.

B. Scope of Services Provided

- (1) Services shall be available and provided twenty-four (24) hours per day, seven (7) days per week, including holidays, in the Contractor's licensed foster homes for the duration of the Contract.
- (2) The number of children served on a daily basis shall not exceed the capacity of the foster home, as specified in the applicable license, except as permitted under an exception approved by the Department for siblings or older foster youth.
- (3) Services shall include appropriate supervision of care.
- (4) Specific services for each child will be negotiated and described in detail in the ICPA. Subject to the specific services outlined in each ICPA, the following services will also be provided or arranged by the Contractor as part of the per diem:
 - (a) Room and board;
 - (b) Case management;
 - (c) Arrangements for treatment programming, medical and dental care;
 - (d) Following the payment of an Initial Clothing Allotment (if appropriate), clothing to meet the on-going needs of the child that is adequate and appropriate to the season and the child's age and sex. Additional clothing allotments may be negotiated as needed with the Local Office. Any clothing purchased for the child is the property of the child and will go with the child in the event that he/she returns home or moves to another placement; and

- (5) Mental health or behavioral health therapy for the child will be provided as required by the case plan. The ICPA will have a separate referral attached for any therapy required. Except as provided in Section A (5), this referral must be approved by the Regional Manager or his/her designee. The therapy must be provided pursuant to a Community Based Service contract or pursuant to this Contract, if this Contract contains a component for the applicable therapy and the referral is to the Contractor. Any services provided by Contractor shall conform to the Department's service standards, which currently can be found at:

<http://in.gov/dcs/2855.htm>

However, the most current link containing the Department's service standards at the relevant time will control.

- (6) Transportation of the child will be provided for family participation when no transportation resource is available to the family, provided that Contractor will not be required to provide for such transportation more than one (1) time per week and/or for trips that are outside of the county the foster home is located in and more than one hundred (100) miles round trip driving distance from the foster home. However, if trips in excess of the usual and customary limitations described herein above are required by the court or the Department and are approved by the Regional Manager or his/her designee, then mileage expenses for such trips will be reimbursed at the State mileage rate. In addition, reimbursement for staff time and transportation expenses that exceed the usual and customary limitations and are required by the court or the Department will be negotiated in the ICPA and must be approved by the Regional Manager or his/her designee.

C. Supplemental Services

Contractor will ensure that the following additional services are provided for the child:

- (1) School registration, including transfer of the child's previous school records and immunization records, in a school facility, grade, or program that is appropriate for the child's educational needs and consistent with the provisions of any individual education program (IEP) developed for the child either prior to placement or during the child's placement. When reasonably possible, unless an exception is approved by the Placing Agency as necessary for the child's physical, educational and behavioral needs, the child's educational program will be provided in a public school in the community where the foster home is located or in the school corporation in which the student has legal settlement. In the alternative, if the exception noted in the previous sentence has been approved, and unless otherwise specified in an educational program approved by the Regional Manager, the educational services provided shall meet the standards set by the Indiana Department of Education, including eligibility for transferable credit towards graduation.
- (2) Visitation with the child's family members or others, as approved by the Placing Agency and in accordance with the child's ICPA, at times that accommodate the reasonable needs of the family.

- (3) Participation in school extracurricular activities as appropriate to the needs, desires, and capabilities of the child.
- (4) Contractor will ensure the child's medical passport is updated as needed for DCS wards.
- (5) Per DCS policy, the approved assessment tool for children age 16 and older is the Ansell-Casey Life Skills Assessment, which can be located and completed online at www.caseylifeskills.org. The assessment is to be completed by the child as well as his/her caregiver. Contractor is responsible for administering each assessment, analyzing the results, prioritizing, with the child's input, the applicable independent living skills that the child needs to acquire and teaching the skills as prioritized. Independent living skills include but are not limited to: Daily Living (time management, self discipline, self care, safety issues, personal hygiene, responsible behavior, developing positive peer and adult relationships), Money Management (developing a budget, understanding needs and wants, managing money, saving money, credit check), Employment (types of jobs available, skills needed, applying for employment, practice interviewing, expectations of employers, dress code for work, maintaining employment), and Career Planning (researching career options, education requirements for different careers, vocational programs, researching colleges and universities, applying for college, military service).

D. Preparation for Placement

- (1) Before a Planned Placement (as defined herein) of a child in a foster home, the Placing Agency shall assess the needs of a child. Based on review of this assessment and the child's needs, the Department will make a referral specifying the service category. Contractor and the Placing Agency shall jointly review the proposed referral and the child's needs and determine the appropriateness of a particular foster home. Within forty-five (45) days of such Planned Placement, Contractor shall prepare a Treatment Plan that is consistent with the child's ICPA and current Case Plan.
- (2) After an Emergency Placement (as defined herein), Contractor, Department and the Placing Agency, if different from the Department, shall jointly review the proposed referral within seven (7) days to determine the child's need for further placement pursuant to paragraph D.(1) of this Section. Within forty-five (45) days of such Emergency Placement, Contractor shall prepare a Treatment Plan that is consistent with the child's ICPA and current Case Plan.

E. Progress Reports

- (1) For each child placed by a Placing Agency in a foster home supervised by Contractor, Contractor will ensure that a progress report relating to the child's current Case Plan and Treatment Plan will be completed and forwarded to the appropriate family case manager or probation officer at least quarterly or more frequently if requested, although not more frequently than once per month.

- (2) Contractor will complete and deliver to the family case manager or probation officer, at least fifteen (15) days prior to any of the following scheduled occurrences, a progress report updated to a date not more than thirty (30) days before the scheduled occurrence:
 - (a) A periodic case review court hearing;
 - (b) A permanency plan hearing;
 - (c) A hearing on modification of the dispositional decree; or
 - (d) A time provided in the child's current Case Plan for review and possible modification of the plan.
- (3) The progress report must specifically address the following:
 - (a) Progress toward permanency plan goals;
 - (b) Services provided;
 - (c) Treatment plan goals and accomplishments;
 - (d) Current needs of the child;
 - (e) Plans to meet identified needs of the child; and
 - (f) Projected discharge date.
- (4) Contractor shall make available appropriate staff for the preparation of all progress reports, discussion of the reports with staff of the Placing Agency responsible for care and supervision of the child, and discussions with the child's parent(s), guardian or legal custodian to the extent appropriate.
- (5) Contractor shall make available at least one (1) staff person who is knowledgeable about the child's progress as needed for appearances at court hearings to present progress reports and prognosis of treatment, and to answer questions concerning a child who is the subject of the hearings.

F. Family Services

- (1) In accordance with the ICPA and the current Case Plan, and in preparation of a permanency plan, services shall be provided to both the child and the child's family for discharge and return of the child to the family home, unless the court has determined that reasonable efforts toward family reunification are not required.
- (2) Family participation shall at a minimum include the person chosen as the proposed primary caregiver upon discharge of the child, as determined by the assigned family case manager or probation officer. The nature and level of family participation shall be jointly decided between Contractor and the family case manager or probation

officer, in accordance with the child's current Case Plan. The participation may include regular family counseling if so stated in the Case Plan and arranged for in the ICPA.

- (3) Contractor shall be provided reasonable notice of all child and family team meetings scheduled by the family case manager that Contractor or foster family are invited to attend. If invited, Contractor and/or foster family are expected to attend. If Contractor is not selected to be a part of the team, or is not invited to or cannot otherwise attend the child and family team meeting(s), then the Department's representative will provide the Contractor with a verbal or written update on the details of any changes in the child's care and treatment as a result of the child and family team meeting(s) within a reasonable time and such details will also be captured in the Case Plan, which will be provided to the Contractor within sixty (60) days of a child's first placement or the date of a dispositional decree, unless it is completed and available to be provided to the Contractor on an earlier date.

G. Medical or Behavioral Procedures

- (1) Contractor will notify the Placing Agency (by telephone, facsimile or email transmission) immediately, meaning not later than twenty-four (24) hours after the occurrence of any hospital admission, or any serious injury or illness requiring emergency room medical attention, hospitalization, or invasive treatment for a child.
- (2) All non-routine medical procedures will require at least one (1) written medical opinion and court approval. Unless parental rights have been terminated, a parent, guardian, or custodian may authorize medical treatment for a child who is placed under this Contract. The use of psychotropic medication must be authorized by a parent or guardian and by the Placing Agency use is required in an emergency situation in which the child presents a danger to himself/herself or others and no other form of intervention will mitigate the danger, but only if the medication has been prescribed or ordered by a licensed practitioner. Contractor must notify the Placing Agency (by telephone, facsimile or email transmission) of any such emergency incident or use immediately, meaning not later than twenty-four (24) hours after its occurrence. Department will waive the requirement of parent/guardian consent in the following situations (Department consent is still needed): (i) parental rights have been terminated; (ii) the parents or guardians cannot be located; (iii) the parent or guardian is unable to make a decision due to physical or mental impairment; (iv) prior court authorization has been obtained. Department has the right to request a second opinion if there are questions surrounding the need for and/or use of psychotropic medication.
- (3) The use of physical restraints or seclusions shall comply with the standards set forth in the Children's Health Act of 2000 (42 U.S.C. § 290jj et seq.)

H. Transfers of Children

- (1) Excluding any time periods scheduled for planned respite and in response to an emergency situation, Contractor may transfer any child to a different licensed foster

home (that is licensed at the same level as the current foster home) or licensed residential respite program for a period of up to twenty-four (24) hours; or if during a weekend or holiday, until the start of the next state of Indiana business day at no additional cost to the Department. The Department shall be notified prior to the emergency transfer if at all possible, but at least within twenty-four (24) hours. The Placing Agency will determine whether court approval is required or should be obtained for the transfer and so advise the Contractor. The Contractor and Placing Agency will sign an amended ICPA for any child who is transferred to a different foster home pursuant to this paragraph if such transfer results in a change in the agreed per diem rate or in the services required by the child.

- (2) The Placing Agency will be responsible for requesting court approval for any proposed transfer if the Placing Agency determines court approval is necessary. Contractor will assist the Placing Agency in any request for approval of a transfer and any court hearing that may be required.
- (3) Before implementing an approved transfer to a different agency, the Contractor will consult with the receiving agency to promote a successful transition for the child and to maintain continuity of the specialized services and care unique to the child.

I. Transfer of Foster Home Licenses

- (1) If a child(ren) is placed under the terms of this Contract with an ICPA in effect, and the child's foster family requests that the family's license be transferred to another contractor which is a licensed child placing agency, the following conditions apply:
 - (a) All transfers must be approved by the Department and conducted in a manner that protects and maintains the continuity of the specialized services and care unique to the child. In order for the transfer to occur, the Placing Agency (or agencies), and both the Contractor which holds the ICPA for the child(ren) and the contractor which proposes to be the new contractor for the child(ren) must all agree that this transfer is in the child's (children's) best interest.
 - (b) The license may only transfer under subparagraph (a) above if the foster family is in good standing with the Department (i.e. no corrective or disciplinary actions), is in full compliance with licensing regulations, and has given the Contractor holding the effective ICPA for the child(ren) appropriate notice of the foster family's intent to request a transfer to another contractor.
 - (c) Contractor will transfer all contents of the licensing file except for the Adoption/Foster Family Preparation Summary (commonly known as the home study), personal references for the resource family, and the environmental checklist. The remainder of the licensing file will be transferred within fourteen (14) business days of receipt of the transfer request.

- (d) All transfers will be subject to the policies and procedures established by the Department.

J. Temporary Absence from Program

If a child placed for foster care services with Contractor runs away or otherwise leaves the foster home without proper authorization or supervision, or is admitted to a hospital, Contractor will hold the room and bed in the home which is available for the child's return for at least five (5) calendar days after the child has been absent from the foster home overnight, unless otherwise directed. If the child does not return to the program within five (5) consecutive days of absence, Contractor will release the room or bed to which the child was assigned and terminate the per diem charge for maintenance of the child at the foster home, unless the Placing Agency and the Department's Regional Manager approve in writing an extension of the time specified in this paragraph. Any return of the child after five (5) consecutive days of absence will be considered a new admission for payment purposes, as provided in Section 3 of this Contract.

K. Publications

Unless consent is given by the Department Director or his designee, Contractor shall not use a photograph or other personally identifying information concerning any child placed by the Department with Contractor in relation to any advertising for Contractor's programs or services. Nothing in this Contract prohibits Contractor from using photographs or other personally identifying information for recognition of a child's school activities, or individual or group achievements or accomplishments. This Section shall not apply to a child for whom an adoptive home is being sought. Nothing in this paragraph is intended to restrict or prohibit Contractor from publicizing or circulating information about or photographs of a child if the required consent has been obtained.

L. Medicaid Covered Services

- (1) With regard to a Planned Placement, the Placing Agency will advise Contractor at the time of placement or as soon as possible (depending on when the information is available from Medicaid) if the child is eligible for Indiana Medicaid coverage and provide the child's Medicaid number. In the case of an Emergency Placement, the Placing Agency will advise the Contractor within ten (10) business days or as soon as possible (depending on when the information is available from Medicaid) of the child's Medicaid eligibility and provide the child's Medicaid number. The ICPA will include the child's Medicaid eligibility status.
- (2) With respect to medical care for the child's physical needs, if the child is eligible for Medicaid, Contractor will determine whether the child's services are eligible for Medicaid coverage under any applicable provision of the Indiana Medicaid state plan or under any available Medicaid waiver. If the services for the child's physical needs are eligible or available under any Medicaid waiver and if Contractor is enrolled as a Medicaid provider, Contractor will request Medicaid authorization for coverage of the child's treatment program or services and will timely provide all documentation and

information that is within its control and necessary to pursue Medicaid or waiver reimbursement, including appeals of denials. The Placing Agency will provide any needed assistance and documentation to facilitate Medicaid authorization and coverage. Except as provided herein, if the child is Medicaid eligible and Contractor does not provide the required service for the child's physical needs, Contractor will seek and use a Medicaid-eligible provider or waived service and will similarly pursue reimbursement. Use of Medicaid eligible providers or waived services will not be required when treatment is sought for a serious injury or illness requiring emergency room medical attention, emergency hospitalization, or emergency invasive treatment for a child. If a Medicaid eligible or waiver service provider is not available or appropriate, Contractor must seek prior approval from the Department for use of any such non-Medicaid providers. Contractor will coordinate with the Department to manage child's medical care under Indiana Care Select.

- (3) Contractor shall cooperate with the Department with regard to qualification of the child for all Medicaid or waiver services, including services for physical, mental or behavioral health. The Placing Agency will retain financial responsibility for appropriate medical or treatment services or expenses not covered or otherwise reimbursed by Medicaid.

M. Licensing Rules and Regulations

During the term of this Contract, and with respect to Contractor's services and programs provided to a child placed with Contractor pursuant to an ICPA, Contractor will at all times maintain compliance with all rules and regulations of the Department that are applicable to Contractor's licensing category or categories as stated in the current **Attachment 1** and that are not in conflict with specific terms or conditions stated in this Contract.

N. Outcome Measures

The services provided by Contractor under this Contract will be measured by the following goals and outcomes at intake, discharge, and follow-up for the child, as appropriate:

- (a) Clinical Outcomes:
 - (i) Child problems (at intake; changes at discharge); and
 - (ii) Family problems (at intake; changes at discharge).
- (b) Functional Outcomes:
 - (i) Educational outcomes (at discharge and follow-up);
 - (ii) Employment outcomes (at discharge and follow-up);
 - (iii) Absence of court involvement (at follow-up); and
 - (iv) Absence of abuse (at follow-up).

- (c) Effectiveness of Placement:
 - (i) Restrictiveness of living environment (at discharge and follow-up);
 - (ii) Achievement of permanency plan; and
 - (iii) Nature of discharge.
- (d) Consumer Satisfaction:
 - (i) Parent, child and Placing Agency satisfaction.
- (e) Risk Factors:
 - (i) Demographic variables; and
 - (ii) Child and family risk factors, including a total risk score derived from the identified factors.

Contractor shall provide outcome data and reports as requested by the Department.

O. Safeguarding of Information

- (1) In accordance with 42 U.S.C. § 671(a)(8), Contractor shall establish and maintain safeguards which permit use of or disclosure of information concerning individuals placed with Contractor by a Placing Agency only for purposes directly connected with the following:
 - (a) The administration of the Department's plan or programs under Title IV-E of the federal Social Security Act;
 - (b) Any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of the Department's plan or program under Title IV-E of the federal Social Security Act;
 - (c) The administration of any other federal or federally assisted program which provides assistance in cash, in kind, or in services directly to individuals on the basis of need;
 - (d) Any audit or similar activity conducted in connection with the administration of the Department's plan or program under Title IV-E of the federal Social Security Act by any governmental agency or accrediting body authorized by law to conduct such audit or activity, subject to the limitations stated in subparagraph (2) below; or
 - (e) Reporting and providing information to the Department or other appropriate authorities concerning known or suspected incidents of child abuse or neglect.

- (2) The safeguards provided will prohibit the disclosure of information to any committee or legislative body, other than to an agency referred to in subparagraph (1)(d) of this Section with respect to an activity described in that clause, which identifies by name or address any applicant for or recipient of assistance under Title IV-E of the Social Security Act.

P. Placing Agency Responsibilities

- (1) The local office director for the Department or designee will approve and sign the ICPA for each child placed with Contractor at or before the time the child is placed. In the case of an Emergency Placement, the ICPA will be sent by the Placing Agency to the Contractor within one (1) business day. The regional manager for the Department or designee will approve and sign any amendments or supplements to the ICPA.
- (2) At the time of a Planned Placement, the Placing Agency is required to furnish Contractor with all pertinent information that relates to the child and the child's care and treatment while placed with Contractor. Such information must include at least the following items or copies thereof:
 - (a) Child's Case Plan (if available or as soon as required by law);
 - (b) Risk and needs assessment;
 - (c) Relevant court order(s);
 - (d) Child's education records in the possession of the Placing Agency;
 - (e) Copy of child's current Indiana Medicaid card or Medicaid number (as soon as available from Medicaid);
 - (f) Child's Indiana child welfare information system identification number and, if applicable, an executed referral form;
 - (g) Child health summary records, medical records, and medical passport (IC 31-28-1, IC 31-28-2, IC 31-28-3);
 - (h) All necessary releases and consents; and
 - (i) The last four digits of a child's social security number will be provided to Contractor upon placement. In addition, the child's full social security number will be disclosed to Contractor pursuant to an exception set forth in IC 4-1-10 et seq., and including, but not limited to, the following situations:
 - (i) for children age sixteen (16) and older if the Case Plan requires Contractor to assist the child in finding employment;

- (ii) for children enrolled in the Medicaid program as needed for billing purposes, program enrollment, and for on-going confirmation of enrollment status;
 - (iii) for children for whom the rights of the parents have been terminated, the Department may consent to release of the child's social security number pursuant to an exception set forth in IC 4-1-10 et seq.; and
 - (iv) the disclosure of the social security number is expressly permitted or required by state law, federal law, or a court order.
- (3) At the time of an Emergency Placement, the Placing Agency is required to furnish Contractor with the following:
 - (a) Authorization to seek medical treatment;
 - (b) Local Office contact information;
 - (c) Medical information, including known allergies, medical conditions, and medications for the child;
 - (d) Information related to the need for placement of the child;
 - (e) Child's child welfare information system identification number and, if applicable, an executed referral form;
 - (f) A copy of child's Indiana Medicaid card or Medicaid number (as soon as available from Medicaid) and additional information needed for care of the child shall be provided within ten (10) business days; and
 - (g) Child's Case Plan (if available or as soon as required by law).
- (4) In collaboration with the Contractor, the assigned family case manager will personally meet with the child once every thirty (30) days and meet with the foster family once every sixty (60) days.
- (5) The Placing Agency shall be responsible for advising Contractor of current agency contact information (family case manager, supervisor, and probation officer, if applicable), including telephone numbers and email addresses, to ensure the Contractor meets its obligation of twenty-four (24) hour notification if a child is injured, hospitalized, has a life-threatening illness, has run away, or has died.
- (6) The Placing Agency will be responsible for determination of the child's initial IV-E eligibility status and any changes in that status.

Q. Placement and Care Responsibility

- (1) At all times during which a child is in Contractor's program in accordance with this Contract and the child's ICPA, the Placing Agency retains legal responsibility for placement, care, and supervision of the child, in accordance with all requirements of 42 U.S.C. § 672(a)(2) and applicable orders of the court having jurisdiction over the child.
- (2) The assigned family case manager is required to and will be responsible for:
 - (a) Notification to Contractor at least ten (10) business days in advance of any scheduled case reviews and reasonable notification to Contractor, as provided in Section 2.F.(3) of this Contract, of child and family team meetings so that Contractor may provide adequate notice to the foster family. However, Contractor presence at a hearing during which the next case review is scheduled shall satisfy the notice requirements hereunder, provided that if the date of the next scheduled case review is changed, Contractor will receive the advance notice described in this subparagraph; and
 - (b) Consultation with Contractor's case management staff to ascertain that Treatment Plans are consistent with individual Case Plans and permanency plans.

R. Compliance with Legal Requirements

The Placing Agency will be responsible for compliance with all legal requirements relating to continuing care and supervision of the child while the child is under the care of the Contractor, including but not limited to the following:

- (1) Timely preparation and submission to the court of a permanency plan for the child, or any revised or updated permanency plan;
- (2) Making a request for the scheduling of any permanency hearing or case review hearing within the time or times required by applicable law or any court orders, as well as attendance at any scheduled permanency hearing or case review hearing;
- (3) Documentation evidencing that reasonable efforts have been made to reunify the child with his or her family, or to implement an approved permanency plan, in accordance with applicable orders of the court; and
- (4) Filing of any petition to terminate the parent-child relationship of the child as required or permitted under any applicable provision of IC 31-35-1 et seq.

S. Maximum Length of Stay

Unless a child's Case Plan calls for a longer period of stay with Contractor's program, the maximum length of stay in the program shall be twelve (12) months. Contractor may submit a request for an extension of the length of placement through the submission of a new ICPA for approval by the Department and, if necessary, for approval by the court. A

request for extension shall include an explanation of the need for extended placement based on the approved Case Plan and Treatment Plan, permanency needs, and the best interests of the child.

T. Adoption of Child

In the event a child placed through Contractor is being evaluated or prepared for adoption, Contractor will transfer all contents of the licensing file including the Adoption/Foster Family Preparation Summary (commonly known as the home study), personal references for the resource family, and the environmental checklist within fourteen (14) business days of receipt of the request. Contractor shall only be required to release the licensing file directly to the Department. The Department acknowledges that the information contained in any such home study is only as current as the date of its preparation and not as of the date provided.

Section 3. Consideration

A. Amount and Source of Payment

The Department will pay Contractor for the services and programs specified in the ICPA and described in Section 2 of this Contract based on the Contractor's established and approved rates as set forth in the current Attachment 1 (as amended by mutual agreement and hereby incorporated by reference) and based on Attachment A to this Contract (which is hereby incorporated by reference), and other rates or payments stated in the ICPA for the particular program in which the child is placed and the particular services to be provided to the child. Except as otherwise provided herein, payments will be made based on claims submitted by Contractor to the Department in accordance with Section 30 of this Contract.

B. Establishment of Rates and Program Identification

- (1) During the term of this Contract (but excluding the year 2010 in its entirety), the Contractor will submit to the Department, by February 1 each year (excluding February 2010), its proposed schedule of Contractor's established rates for the following fiscal year for the services that Contractor provides for foster home placement of children who may be placed with Contractor pursuant to this Contract. The Department will review the Contractor's established rates before March 15 (excluding March 2010), and advise Contractor by letter whether it accepts the rate schedule proposed by Contractor. The Department may accept rates with respect to individual programs included in Contractor's rate schedule, or request additional information regarding the requested rates. Negotiation of rates will be completed by May 15 of each year (excluding May 2010), unless the Department grants an extension of time with respect to one or more particular programs, and final rates will be confirmed in an amended Attachment 1 during each year of the Contract (excluding 2010).
- (2) The rates that Contractor may charge to the State for its programs during a calendar year, pursuant to any ICPA in effect during that year, must be the Contractor's established rate for that program that has been approved by the Department, as stated

in a letter issued by the Department to Contractor upon completion of the rate review procedure described in subdivision (1) of subparagraph B. of this Section. The State will not pay any rate for a program listed in the schedule of rates that differs from the rate approved by the Department under subdivision (1) of subparagraph B. of this Section, except as authorized by the Department pursuant to subdivisions (3) and (6) of subparagraph B. of this Section.

- (3) The cost of providing services described in the ICPA that are not included in the Contractor's established and approved rates, as set forth in the current **Attachment 1** (as amended by mutual agreement), will be reimbursed to Contractor by the Department based on the rate agreed to in the ICPA. Reimbursement of all special travel expenses will be governed by the terms described in Section 38.B. of this Contract.
- (4) In Contractor's schedule of established rates, Contractor will take into consideration all funding sources, other than funds provided through this Contract, that may be available to defray all or any part of the costs of each program to which the rate applies. If Contractor is an enrolled Medicaid provider and provides services that are reimbursed by the Indiana Medicaid Program, Contractor will exclude from its per diem all treatment costs that are reimbursed for an eligible child.
- (5) The schedule of Contractor's established and approved rates applicable on an annual basis under this Contract will be negotiated and agreed between Contractor and the Department and set forth in the current **Attachment 1** (as amended by mutual agreement).
- (6) Rates and program names, identified by service category as stated in the current **Attachment 1**, may be changed during the year to which they apply by letter submitted to the Department and approved in writing by the Director of the Department or his or her designee. Rate changes shall not be effective until Contractor has received written approval as herein provided, unless another effective date is stated in the approved letter.

C. Other Funding Sources

Contractor shall not require any parent, guardian, or custodian responsible for support of a child placed with Contractor under any ICPA subject to this Contract to make any payment to Contractor for support, maintenance, or the cost of services for the child. Establishment and collection of any required parental support payments for the child shall be solely the responsibility of the Department.

D. Time Period for Payment

Per diem charges for each child placed under this Contract will begin on the day of the child's placement with Contractor and end on the day before the child's termination with Contractor's program.

Section 4. Term

The term of this Contract is eighteen (18) months beginning January 1, 2010 and ending June 30, 2011.

Section 5. Access to Records

The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract, and for three (3) years from the date of final payment under this Contract, for inspection by the State or its authorized designees. Copies shall be furnished at no cost to the State if requested.

Section 6. Assignment; Successors.

The Contractor binds its successors and assignees to all the terms and conditions of this Contract. The Contractor shall not assign or subcontract the whole or any part of this Contract without the State's prior written consent. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State, provided that the Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

Section 7. Audits

- A. Following the expiration of this Contract, the Contractor shall arrange for a financial and compliance audit of funds provided by the State pursuant to this Contract. Such audit is to be conducted by an independent public or certified public accountant (or as applicable, the Indiana State Board of Accounts), and performed in accordance with the Indiana State Board of Accounts publication entitled "Uniform Compliance Guidelines for Examination of Entities Receiving Financial Assistance from Governmental Sources," and applicable provisions of the Office of Management and Budget Circulars A-133 (Audits of States, Local Governments, and Non-Profit Organizations). The Contractor is responsible for ensuring that the audit and any management letters are completed and forwarded to the State in accordance with the terms of this Contract. Audits conducted pursuant to this paragraph must be submitted no later than nine (9) months following the close of the Contractor's fiscal year. The Contractor agrees to provide the Indiana State Board of Accounts and the State an original of all financial and compliance audits. The audit shall be an audit of the actual entity, or distinct portion thereof that is the Contractor, and not of a parent, member, or subsidiary corporation of the Contractor, except to the extent such an expanded audit may be determined by the Indiana State Board of Accounts or the State to be in the best interests of the State.
- B. Contractor shall timely file an "Entity Annual Report" (Form E-1) with the State and the Indiana State Board of Accounts.

Section 8. Authority to Bind Contractor

The signatory for the Contractor represents that he/she has been duly authorized to execute this Contract on behalf of the Contractor and has obtained all necessary or applicable approvals to make this Contract fully binding upon the Contractor when his/her signature is affixed, and accepted by the State.

Section 9. Compliance with Laws

- A. The Contractor shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, including any disaster plan protocol and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the State and the Contractor to determine whether the provisions of this Contract require formal modification.
- B. The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC § 4-2-6 et seq., IC § 4-2-7 et seq., the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <http://www.in.gov/ethics/>. If the Contractor or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the Contractor. In addition, the Contractor may be subject to penalties under IC §§ 4-2-6, 4-2-7, 35-44-1-3, and under any other applicable laws.
- C. The Contractor certifies by entering into this Contract that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State. The Contractor agrees that any payments currently due to the State may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.
- D. The Contractor warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Contractor agrees that the State may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Contract.
- E. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that the

State may delay, withhold, deny, or apply under this Section shall not be subject to penalty or interest, except as permitted by IC § 5-17-5.

- F. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.
- G. The Contractor affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.
- H. As required by IC 5-22-3-7:
 - (1) the Contractor and any principals of the Contractor certify that (A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of (i) IC 24-4.7 [Telephone Solicitation of Consumers], (ii) IC 24-5-12 [Telephone Solicitations] , or (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) the Contractor will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.
 - (2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor (A) except for de minimis and nonsystematic violations, has not violated the terms of IC 24-4.7 in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is preempted by federal law; and (B) will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

Section 10. Condition of Payment

All services provided by the Contractor under this Contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations. The State shall not be required to pay for work unauthorized by or in breach of this Contract or the applicable ICPA, or performed in violation of federal, state or local statute, ordinance, rule or regulation.

Section 11. Confidentiality of State Information

The parties acknowledge that the services to be performed by the Contractor for the State under this Contract may require or allow access to data, materials, and information containing Social Security numbers maintained by the State in its computer system or other records. In addition to the covenant made above in this Section and pursuant to 10 IAC 5-3-1(4), the Contractor and the State agree to comply with the provisions of IC 4-1-10 and IC 4-1-11. If any Social Security number(s) is/are unlawfully disclosed by the Contractor, the Contractor agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims

and expenses for which it is liable under the terms of this Contract. The Contractor understands and agrees that all data, materials, and information, including but not limited to client information, disclosed to or received by the Contractor or any subcontractor in administering the terms and provisions of this Contract, shall be received and maintained in a confidential manner commensurate with the conditions set forth in this Contract and the requirements of all applicable state and/or federal laws and/or regulations.

The Contractor assures the State that all information concerning specific children and/or families, and/or any other data, materials, and information gathered, obtained by, based upon, or disclosed to the Contractor for the purpose of this Contract or in relation to the services provided hereunder, will not be disclosed to or discussed with any other persons without prior written consent of the State. The Contractor agrees to comply with its own internal privacy/confidential information policy with regard to data, materials, and information disclosed or otherwise provided to the Contractor by the State under the terms of this Contract.

Section 12. Debarment and Suspension

- A. The Contractor certifies by entering into this Contract that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State. The term “principal” for purposes of this Contract means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.
- B. The Contractor certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Contract, including a review of information included at <http://www.in.gov/idoa/2709.htm> and <http://www.epls.gov/> (and any designated successor websites), and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. The Contractor shall immediately notify the State if any subcontractor becomes debarred or suspended, and shall, at the State’s request, take all steps required by the State to terminate its contractual relationship with the subcontractor for work to be performed under this Contract.

Section 13. Default by State

If the State, sixty (60) days after receipt of written notice, fails to correct or cure any material breach of this Contract, the Contractor may cancel and terminate this Contract and institute the appropriate measures to collect monies due up to and including the date of termination.

Section 14. Disputes

- A. Should any disputes arise with respect to this Contract, the Contractor and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.

- B. The Contractor, the State and the Placing Agency all agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor.
- C. If a party to the Contract is not satisfied with the progress toward resolving a dispute, the party must notify in writing the other party of this dissatisfaction. Upon written notice, the parties have ten (10) working days, unless the parties mutually agree to extend this period, following the notification to resolve the dispute. If the dispute is not resolved within ten (10) working days, a dissatisfied party will submit the dispute in writing according to the following procedure:
 - (1) The parties agree to resolve such matters through submission in writing of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the Contractor and the State within ten (10) working days after presentation of such dispute for action. The presentation may include a period of negotiations, clarifications, and mediation sessions and will not terminate until the Commissioner or one of the parties concludes that the presentation period is over. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration or mediation for a determination. If a party is not satisfied with the Commissioner's ultimate decision, the dissatisfied party may submit the dispute to an Indiana court of competent jurisdiction.
 - (2) The State may withhold payments on disputed items pending resolution of the dispute. Upon resolution of the dispute pursuant to paragraph C. (1) of this Section, all payments shall be made within thirty-five (35) days. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for the Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

Section 15. Drug-Free Workplace Certification

The Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor or an employee of the Contractor in the state of Indiana has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to,

suspension of Contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total contract amount set forth in this Contract is in excess of \$25,000.00, the Contractor hereby further agrees that this Contract is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the Contractor and made a part of the contract or agreement as part of the contract documents.

The Contractor certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph A. above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision C.(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision C.(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs A. through E. above.

Section 16. Employment Option

If the State determines that it would be in the State's best interest to hire an employee of the Contractor, the Contractor will release the selected employee from any non-compete agreements that may be in effect. This release will be at no cost to the State or the employee.

Section 17. Force Majeure

In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

Section 18. Funding Cancellation

- A. When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Director of SBA that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.
- B. This Section does not apply to payments which constitute an entitlement under 42 U.S.C. § 670 et seq. or 42 U.S.C. § 621 et seq.

Section 19. Governing Laws

This Contract shall be construed in accordance with and governed by the laws of the state of Indiana and suit, if any, must be brought in the state of Indiana.

Section 20. Indemnification

The Contractor agrees to indemnify, defend, and hold harmless the State, its agents, officials, and employees from all claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any, or any of their employees while acting within the scope of their employment in the performance of this Contract. The State shall **not** provide such indemnification to the Contractor.

Section 21. Independent Contractor

Both parties hereto, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party.

The Contractor shall be responsible for providing all necessary unemployment and workers' compensation insurance for the Contractor's employees.

Section 22. Insurance

- A. The Contractor shall secure and keep in force during the term of this Contract, the following insurance coverages, covering the Contractor for any and all claims of any nature which may in any manner arise out of or result from Contractor's performance under this Contract:
- (1) Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate unless additional coverage is required by the State and agreed to by Contractor. The State is to be named as an additional insured on a primary basis, with respect to any insurance issued directly to the State or any self-insurance program of the State, for any liability arising directly under or in connection with this Contract.
 - (2) Automobile liability with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence. The State is to be named as an additional insured on a primary basis, with respect to any insurance issued directly to the State or any self-insurance program of the State, for any liability arising directly under or in connection with this Contract.
 - (3) The Contractor shall provide proof of such insurance coverage by tendering to the undersigned State representative a certificate of insurance prior to the commencement of this Contract and proof of workers' compensation coverage meeting all statutory requirements of IC 22-3-2. In addition, proof of an "all states endorsement" covering claims occurring outside the state of Indiana may be required as mutually agreed during the annual rate negotiation process between the State and the Contractor.
- B. The Contractor's insurance coverage must meet the following additional requirements:
- (1) The insurer must have a certificate of authority issued by the Indiana Department of Insurance.
 - (2) Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor.
 - (3) The State will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the State under this Contract shall not be limited by the insurance required in this Contract.
 - (4) The insurance required in this Contract, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned state of Indiana agency.

- C. Failure to provide insurance as required in this Contract may be deemed a material breach of Contract entitling the State to immediately terminate this Contract. The Contractor shall furnish a certificate of insurance and all endorsements to the State before the commencement of this Contract.

Section 23. Licensing Standards

- A. The Contractor, its employees and subcontractors shall comply with all required and applicable licensing standards, certification standards, and any other laws, rules or regulations governing services to be provided by the Contractor pursuant to this Contract. The State will not pay the Contractor for any services performed when the Contractor, its employees or subcontractors are not in compliance with such required and applicable laws, rules or regulations. If any required license, or certification expires or is revoked, or any disciplinary action is taken against a required and applicable license or certification, the Contractor shall notify the State immediately and the State, at its option, may immediately terminate this Contract or an ICPA regarding a child in a placement which is not in full compliance with all required licensing standards, provided however, if this Contract is terminated based on a licensing revocation or other disciplinary action that is reversed or overturned on appeal, this Contract will be immediately reinstated by the Department. This paragraph shall not apply to any voluntary accreditation that a Contractor chooses to maintain. If accreditation is not required for the Contractor, noncompliance with voluntary accreditation standards shall not constitute grounds for nonpayment, revocation, or any other disciplinary actions outlined in this Section.
- B. If the required license of any of the Contractor's employees or subcontractors expires or is revoked, Contractor will immediately prohibit such employee or subcontractor from providing any services that are subject to this Contract, unless the employee or subcontractor is granted a provisional license or is otherwise authorized to continue to provide services. The Department may, at its option, terminate this Contract if Contractor fails to comply with this requirement.

Section 24. Merger and Modification

This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. Except as provided in Section 3.B.(6) of this Contract, this Contract may not be modified, supplemented, or amended, in any manner, except by written contract amendment signed by all necessary parties.

Section 25. Minority and Women's Business Enterprises Compliance.

The Contractor agrees to comply fully with the provisions of 25 IAC 5 and the Subcontractor Commitment submitted to the State. No changes may be made to the commitment without the written approval of the Minority and Women's Enterprises Division of IDOA.

The following MBE's and WBE's listed on the Minority and Women's Business Enterprises Division directory of certified firms will be participating in this Contract.

NONE

The Contractor agrees to submit a copy of the agreement entered into between the Contractor and each MBE/WBE subcontractor where the State took the selection of the MBE/WBE by the Contractor into consideration when issuing the procurement award. The copy of the agreement must be submitted to the MWBE Division in IDOA within ninety (90) days of the execution of the Contract between the Contractor and the State. The Contractor also agrees to send all amendments, changes, and terminations to these agreements to the MWBE Division in IDOA within ninety (90) days of their execution. Failure to provide a copy of the agreement or subsequent amendment, change, and termination may result in exclusion from future State procurements. If the Contractor is not excluded from future procurements, the actions or inactions of the Contractor with regard to the above will be taken into account in all phases and scoring in future procurements. In addition, the Contractor must obtain the approval of the Division before changing any MBE/WBE participation plan submitted in connection with this Contract.

Section 26. Nondiscrimination

This covenant is enacted pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act. Breach of this covenant may be regarded as a material breach of this Contract, but nothing in this covenant shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the Contractor or any subcontractor.

Pursuant to the Indiana Civil Rights Law, specifically including IC 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Contractor covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's: race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Furthermore, the Contractor certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services; provided however, that the terms of this paragraph are subject to and superceded by the terms of Contractor's license for any program, with regard to eligibility of any category or classification of children for admission to a particular program.

The Contractor understands that the State is a recipient of federal funds, and therefore, where applicable, Contractor and any subcontractors agree to comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246.

Section 27. Notice to Parties

Whenever any notice, statement or other communication is required under this Contract, it shall be sent to the following addresses, unless otherwise specifically advised.

A. Notices to the State or the Department shall be sent to:

**Regina C. Ashley
Deputy General Counsel
Indiana Department of Child Services
302 W. Washington Street, Rm E306, MS47
Indianapolis, Indiana 46204**

B. Notices to the Contractor shall be sent to:

(This information will be filled in with a label.

Include contact name and/or title, name of vendor, specific address.)

C. As required by IC 4-13-2-14.8, payments to the Contractor shall be made via electronic funds transfer in accordance with instructions filed by the Contractor with the Indiana Auditor of State.

Section 28. Order of Precedence; Incorporation by Reference

Any inconsistency or ambiguity in this Contract and related documents shall be resolved by giving precedence in the following order:

- (1) the provisions of any applicable court order;
- (2) the applicable ICPA;
- (3) the individual child's current Case Plan and Treatment Plan;
- (4) the text of this Contract and any attachments or amendments thereto, including, but not limited to **Attachment A**, the current **Attachment 1**, and **Attachment 2**;
- (5) any additional or supplemental documents prepared by the Department or a Placing Agency and accepted by Contractor; and
- (6) any additional or supplemental documents prepared by Contractor and accepted by the Department.

All attachments, and all documents referred to in this paragraph are hereby incorporated fully by reference.

Section 29. Access to Case Records

The Contractor shall grant the State shared access to all case records and other documents described in IC 31-27-6-15 and IC 31-27-2-5 necessary for its license and monitoring by the Department. The Contractor shall grant the State shared access to all such documents. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to these documents and materials developed and used to assist in the services provided while the materials are in the possession of the Contractor. The Contractor shall provide the State full, immediate, and unrestricted access to such documents and materials during the term of this Contract and as necessary thereafter.

Section 30. Payments and Fiscal Requirements

- A. All payments shall be made in arrears in conformance with State fiscal policies and procedures and, as required by IC 4-13-2-14.8, by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC 4-13-2-20.
- B. Contractor shall submit claim forms and claim documentation as may be required by State for payment under this Contract. Invoices and claim forms will be submitted monthly for services provided during the calendar month(s) preceding the date of the invoice. Payment will be made not later than sixty (60) days after the date Contractor's invoice has been received by the Department together with a properly prepared claim voucher and documentation, and approved for payment as provided herein.
- C. Unless otherwise directed by the Department, Contractor shall submit to the Local Office responsible for placement of or payment for the child or children for whom the claim is made all claims, with appropriate documentation attached showing completion of the service units for which Contractor is requesting payment under this Contract and each applicable ICPA. Documentation should specify the program and services provided for each child for whom the claim is submitted, the name of the child, the dates on which the services were provided, and the payment rate applicable to the child, program, and services provided, based on the rates established and approved for the particular program or service as provided in Section 3 of this Contract and specified in the ICPA for the child.
- D. Contractor shall maintain financial and accounting records which identify the specific costs attributable to each service component or program listed in the current **Attachment 1**, as well as referenced in the financial attachment (**Attachment A** or its successor). Contractor shall further maintain, and make available to the State upon request, a written cost allocation plan, which identifies procedures for attributing costs to each program and service component, and which is consistent with any applicable standards or guidelines contained in the applicable Office of Management and Budget (OMB) Circular or federal procurement regulations referenced in paragraph F. below and/or 45 CFR Part 74. More restrictive fiscal accountability may be required of Contractor by State should State determine that Contractor is financially unstable, has a history of poor accountability, or has a management system which does not meet the standards required by the state of Indiana or the United States Government.

- E. Contractor shall maintain the funds received pursuant to this Contract in an identifiable bookkeeping account and shall use those funds solely for the purpose set forth in this Contract, in accordance with the terms of this Contract and each ICPA for children served by Contractor.
- F. Contractor agrees to follow generally accepted accounting procedures and practices which sufficiently and properly reflect all costs incurred by Contractor in providing services for payment pursuant to this Contract. Contractor shall manage and account for all funds received under this Contract in accordance with applicable cost principles specified in one of the following federal regulations:
 - (1) 2 CFR Part 225 if Contractor is a governmental entity (including a school corporation);
 - (2) 2 CFR Part 220 if Contractor is an institution of higher education or a private school or educational organization;
 - (3) 2 CFR Part 230 if Contractor is a non-profit organization; or
 - (4) 48 CFR Subpart 31.2 if Contractor is a for-profit or other business or commercial organization.
- G. With the exception of costs governed by any child's individual placement agreement, no costs may be incurred by or services provided by Contractor for payment under this Contract after the expiration date of the term stated in Section 4 of this Contract.
- H. Approval and payment of all claims will be conditioned upon receipt and approval by the Placing Agency of all reports and other documents relating to each child for whom a claim is submitted, as required by any applicable provision of this Contract, the child's ICPA, the current Case Plan, or the Treatment Plan.
- I. Contractor understands and agrees that payment of all compensation by the State shall be conditioned upon the Placing Agency's approval of Contractor's delivery of services and satisfactory performance of this Contract.
- J. Claims must be submitted to State within sixty (60) calendar days after the end of the month in which services are provided or costs incurred. In the event Contractor delays submitting a claim for which it expects third-party reimbursement or if DCS has not provided the Contractor with the required paperwork or referral form, Contractor may submit a written explanation as to why the claim was not timely submitted. State shall pay otherwise valid claims if such explanation is satisfactory.

Section 31. Penalties/Interest/Attorney's Fees

The State (including the Department and all Local Offices) will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney's fees, except as permitted by Indiana law, in part, IC 5-17-5, IC 34-54-8, and

IC 34-13-1. The parties agree that for purposes of IC 5-17-5, payment to Contractor will be timely if made within the time stated in Section 30 of this Contract.

Notwithstanding the provisions contained in IC 5-17-5, any liability resulting from the State's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

Section 32. Security and Privacy of Health Information

- A. The Contractor agrees to maintain the confidentiality of any health records, as defined in IC 16-18-2-168, that Contractor creates, receives from the State or any person, or maintains, at any time during the term of this Contract, regarding a child placed with Contractor by the State, a Local Office, or other Placing Agency for services and/or treatment in accordance with this Contract and the child's ICPA, or regarding any member of the child's family.
- B. Contractor will not disclose any health records to a person other than the State, Local Office, or other Placing Agency responsible for the care and supervision of the child or other person to whom the health records relate, except as permitted by applicable provisions of IC 16-39, applicable provisions of 42 U.S.C. § 290dd-2 and 42 CFR Part 2 with respect to any health records that are alcohol or drug abuse records, and any other applicable federal laws. Contractor agrees to establish appropriate procedures and safeguards to ensure compliance with all applicable requirements of IC 16-39, 42 U.S.C. § 290dd-2 and 42 CFR Part 2. Contractor also agrees to report to the State any use or disclosure of health records described in paragraph A. of this Section by Contractor, its agents, employees, or subcontractors, in a manner not authorized by any applicable provision of IC 16-39, 42 U.S.C. § 290dd-2 or 42 CFR Part 2, whenever Contractor becomes aware of any improper or unauthorized disclosure.
- C. Paragraphs D., E., F. (as to PHI) and G. (as to OCR) of this Section apply only if either of the following conditions is applicable:
 - (1) Contractor is a "covered entity" as defined in 45 CFR § 160.103; or
 - (2) The Office of Civil Rights of the United States Department of Health & Human Services (OCR), or a court of competent jurisdiction, determines that the State is a covered entity (as defined in 45 CFR § 160.103), or that the State is otherwise required to comply with any provision of 45 CFR Part 164 with respect to any protected health information, as defined in 45 CFR § 160.103 (hereinafter "PHI"), that the State or Contractor receives, creates or maintains concerning any child placed with Contractor for services and/or treatment in accordance with this Contract and the child's ICPA.
- D. The Contractor agrees to comply with all requirements of 45 CFR Part 164, Subparts C and E, as amended from time to time, relating to security standards and privacy for PHI that Contractor creates, receives or maintains, concerning each child placed with the Contractor by the State, Local Office, or other Placing Agency in accordance with this Contract and the child's ICPA, or concerning any member of the child's family.

- E. The Contractor agrees to comply with all requirements of 45 CFR § 164.500 et seq., as amended from time to time, relating to confidentiality and disclosure of PHI, with respect to the services and/or treatment it provides or other activity it performs for the State, Local Office or other Placing Agency. In particular, Contractor will do the following:
- (1) Not use or disclose PHI, other than as permitted or required by this Contract or by applicable law;
 - (2) Use appropriate safeguards to prevent use or disclosure of PHI other than as provided by this Contract or by applicable provisions of 45 CFR § 164.500 et seq. (or other applicable law);
 - (3) Report to the State any use or disclosure by the Contractor, its agents, employees, subcontractors or third parties, of PHI obtained, created or maintained by Contractor in connection with services and/or treatment provided under this Contract, in a manner not authorized by this Contract or by applicable law, and mitigate to the extent practicable any harmful effect resulting from an unauthorized disclosure that is known to the Contractor, whenever the Contractor becomes aware of any improper or unauthorized disclosure;
 - (4) Ensure that any subcontractors or agents to whom the Contractor provides PHI received from the State, a Local Office, a Placing Agency, a service provider, or any service recipient, or created or received by the Contractor on behalf of the State, agree to the same restrictions, conditions and obligations applicable to Contractor under this Section regarding use or disclosure of PHI;
 - (5) Make the Contractor's internal practices, books and records related to the use or disclosure of PHI received from, or created or received by the Contractor on behalf of, the State, a Local Office, a Placing Agency, a service provider, or any service recipient, available to the Secretary of the United States Department of Health and Human Services for purposes of determining the State's compliance with 45 CFR § 164.500 et seq. (or other applicable law). The Contractor shall immediately notify the State upon receipt by the Contractor of any such request, and shall provide the State with copies of any materials made available in response to such a request;
 - (6) Make PHI within the custody of the Contractor available for amendment and make available information required to provide an accounting of disclosures pursuant to 45 CFR § 164.528 (or other applicable law), in accordance with the procedures established by the State. The State will promptly provide Contractor with copies of all such State policies and provide Contractor's employees with education and training on all such policies;
 - (7) Report to the State security incidents that resulted in any unauthorized disclosure, loss of availability or integrity of PHI data, and the steps taken to remediate the incident; and
 - (8) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic

PHI that the Contractor creates, receives, maintains, or transmits on behalf of the State.

- F. At the expiration or termination of this Contract, except for Contractor's retention of necessary records to maintain compliance with Indiana licensing laws and regulations, Contractor will return to the source or destroy all PHI or health records obtained under this Contract. If the Contractor or the State determines return or destruction is not feasible, the protections in this Contract shall continue to be extended to any PHI or health records maintained by the Contractor for as long as they are maintained.
- G. Contractor will indemnify and hold harmless the State, the Local Office and any Placing Agency, in accordance with Section 20 of this Contract, in the event any claim is made against the State, a Local Office or a Placing Agency by OCR or any person that alleges a violation of any applicable law concerning PHI or health records that would, if substantiated, constitute a breach of any provision of this Section.

Section 33. Severability

The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

Section 34. Substantial Performance

This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.

Section 35. Taxes

The State is exempt from most state and local taxes and many federal taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this Contract.

Section 36. Termination for Convenience

- A. This Contract may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination based on the applicable service rates established pursuant to Section 3 of this Contract and effective at the time of the Termination Notice. The State will not be liable for payment or reimbursement of the costs of any services performed after the effective date of termination.
- B. If the Contract is terminated in part under this Section, the Termination Notice will specify the particular programs and facilities of Contractor to which the termination applies. Contractor shall not increase the payment rates for any services or programs not affected by the Termination Notice, except as authorized pursuant to Section 3.B. of this Contract.

Contractor may, by written notice to the State within ten (10) days after receipt of the Termination Notice, elect to terminate this Contract in its entirety, effective on the date specified in the State's Termination Notice.

Section 37. Termination for Cause

- A. With the provision of thirty (30) days notice to the Contractor, the State may terminate this Contract in whole or in part if the Contractor fails to:
- (1) Correct or cure any breach of this Contract; the time to correct or cure the breach may be extended beyond thirty (30) days if the State determines progress is being made and the extension is agreed to by the parties;
 - (2) Deliver the supplies or perform the services within the time specified in this Contract or any extension;
 - (3) Make progress so as to endanger performance of this Contract; or
 - (4) Perform any of the other provisions of this Contract.
- B. Contractor agrees that the State may terminate this Contract immediately if Contractor (1) ceases doing business, or (2) assigns, transfers or delegates any of its duties and responsibilities for performance of this Contract to any other person or entity without prior written approval of State, or (3) changes or reorganizes its business in a manner which substantially impairs the ability of Contractor to perform the services for which funding is provided under this Contract. State may also terminate this Contract immediately if an order for relief is entered upon a voluntary or involuntary petition by or against Contractor under any provision of Title 11, United States Code, and the trustee or debtor-in-possession does not timely assume all obligations of this Contract to be performed by Contractor, as provided in 11 U.S.C. § 365, or in the event of appointment of a receiver for Contractor or execution of an assignment for the benefit of creditors of Contractor. State will notify Contractor of the termination, in writing, by certified mail.
- C. The parties acknowledge and agree that the State may terminate this Contract immediately should the Contractor attempt to assign, transfer, convey or encumber this Contract in any way, except as expressly authorized pursuant to the conditions of this Contract. Any notice of termination pursuant to this paragraph shall be provided in writing to the Contractor by certified mail.
- D. The Contractor shall provide written notice to State of any change in Contractor's legal name or legal status including, but not limited to, a sale or dissolution of Contractor's business. State reserves the right to terminate this Contract should Contractor's legal status change in any way. Termination pursuant to this paragraph shall be effective from the date of the change in Contractor's legal status.
- E. Upon termination under this Section, the State shall pay the Contract price, based on the rates established under Section 3 of this Contract and in effect at the time of termination, for services provided and completed. The Contractor and the State shall make all

reasonable efforts in good faith to agree on the amount of payment for services delivered and accepted. Failure to agree will be a dispute under Section 14 of this Contract.

- F. The rights and remedies of the State and the Contractor under this Section are in addition to any other rights and remedies provided by law or equity or under this Contract.

Section 38. Travel

- A. Except as provided in Section 2.B.(6) of this Contract, all expenses for travel (including transportation, mileage, per diem, and any other incidental expenses) of Contractor or any of its employees, in relation to provision or performance of any services described in this Contract, are included in the service rates established in accordance with Section 3 of this Contract.
- B. The State shall reimburse Contractor for special travel expenses required and incurred on behalf of a particular child placed with Contractor, if the special travel requirement:
 - (1) is included in the child's ICPA and the child's Case Plan (with the ICPA taking precedence under Section 28 of this Contract), or any amendments thereto, as an additional service separate from the per diem rate for the child, or
 - (2) is ordered by the court having jurisdiction over the child and is provided by Contractor during the time the child is placed with Contractor pursuant to the ICPA.
- C. Expenditures made by the Contractor for travel as described in paragraph B. of this Section will be reimbursed at the current rate paid by the State and in accordance with the State Travel Policies and Procedures as specified in the current Financial Management Circular.

Section 39. Waiver of Rights

No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the State's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Contractor shall be and remain liable to the State in accordance with applicable law for all damages to the State caused by the Contractor's negligent performance of any of the services furnished under this Contract. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on the programs and services being offered under this Contract, the State may request in writing the replacement of any or all such individuals, and the Contractor may grant such request.

Section 40. Work Standards

The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards applicable to the services provided as described in Section 2 of this Contract. Contractor is responsible for ensuring that its employees, agents, and any subcontractors conform to the professional and technical guidelines and

standards applicable to all services and programs that Contractor provides under this Contract, including the program standards and service categories described or referenced in Section 2 of this Contract.

Section 41. Transfer of Children and Records at Termination of Contract

- A. If this Contract is terminated by either party or not extended, Contractor will assist the State, a Local Office, or other Placing Agency in making appropriate arrangements to transfer each child for whom the State, Local Office, or other Placing Agency is responsible and whose Treatment Plan has not been completed to a program that is designated by the Placing Agency, with the approval of the court having jurisdiction over the child, for the purpose of continuing services in accordance with the child's ICPA and Treatment Plan. In planning and implementing transfer of children as provided herein, both the Contractor and the State, a Local Office, or other Placing Agency will be guided by the best interest of the child as paramount to all other interests, including cost or convenience to the parties.
- B. When a child is transferred from Contractor to another placement due to termination of this Contract, Contractor shall deliver to the Placing Agency, or to the child's new placement as designated by the Placing Agency, the original or a copy of all files and records relating to treatment of a child who received services under this Contract through an ICPA that was in effect during the term of this Contract.
- C. Upon expiration or termination of this Contract, originals or copies of any documents, files, data, studies or reports prepared by Contractor or any subcontractor, relating to programs or services provided through this Contract, shall be delivered to the Department or its designee, if requested by the State.

Section 42. Voluntary Placement Agreements

In the unusual case of any child that is placed with Contractor for foster care services pursuant to a voluntary placement agreement (VPA) entered into under IC 31-34-1-16(b) among the Contractor, a Placing Agency, and the child's parent(s), guardian, or custodian, the provisions of this Contract and the ICPA shall apply to all services provided in accordance with the VPA for which the Department makes any payment, to the extent the provisions of this Contract and the ICPA are not in conflict or inconsistent with the terms and provisions of the VPA.

Section 43. Conflict of Interest

- A. Paragraphs B. through E. of this Section apply if the Contractor is an individual, a corporation that issues stock to individuals representing ownership shares of the corporation, a partnership, a limited liability company, or any other form of business organization or association the members or owners of which could receive a personal financial benefit or increase in personal net worth attributable to income or profits received by the organization (exclusive of compensation in the form of salary or wages paid for services rendered to the organization). This Section, other than paragraph F., does not apply if the Contractor is a nonprofit corporation, a school or university that is not organized or operated for the financial

benefit or profit of individual owners, or an agency of a political subdivision or other governmental organization.

B. As used in this Section:

“Immediate family” means the spouse and the unemancipated children of an individual.

“Interested party,” means

- (1) The individual executing this Contract;
- (2) An individual who has an interest of three percent (3%) or more of Contractor, if Contractor is not an individual; or
- (3) Any member of the immediate family of an individual specified under subdivision 1 or 2.

“Department” means the Indiana Department of Administration.

“Commission” means the State Ethics Commission.

- C. The Department may cancel this Contract without recourse by the Contractor if any interested party is an employee of the state of Indiana.
- D. The Department will not exercise its right of cancellation under paragraph C. above if the Contractor gives the Department an opinion by the Commission indicating that the existence of this Contract and the employment by the state of Indiana of the interested party does not violate any statute or code relating to ethical conduct of state of Indiana employees. The Department may take action, including cancellation of this Contract, consistent with an opinion of the Commission obtained under this Section.
- E. The Contractor has an affirmative obligation under this Contract to disclose to the Department when an interested party is or becomes an employee of the state of Indiana. The obligation under this Section extends only to those facts which the Contractor knows or reasonably could know.
- F. The Contractor acknowledges and agrees that no employee, agent, representative, or subcontractor of the Contractor who may be in a position to participate in the decision-making process of the Contractor or its subcontractors may derive an inappropriate personal or financial interest or benefit from any activity funded through this Contract, either for himself or herself or for those with whom he or she has family or business ties.

Section 44. Environmental Tobacco Smoke

Contractor agrees to comply with all provisions of 20 U.S.C. § 6081 et seq., and any regulations promulgated thereunder. In particular, Contractor agrees that it will require that smoking be prohibited in any portion of an indoor facility, other than a private residence, regularly used for the provision of services to children under the age of 18, and that it will comply with all

applicable requirements of the statute and regulations. Contractor further agrees that it will require the language of this condition to be included in any subcontracts which contain provisions for services to children.

Section 45. Lobbying Activities

- A. Pursuant to 31 U.S.C. § 1352, and any regulations promulgated thereunder, Contractor hereby assures and certifies, to the best of its knowledge and belief, that no federally appropriated funds have been paid, or will be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress, in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement.
- B. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Contract, Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying". If Contractor is required to submit Standard Form-LLL, the form and instructions for preparation of the form may be obtained from the State.
- C. Contractor shall require that the language of this certification be included in the award document for subawards at all tiers (including subcontracts, subgrants, and agreements under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
- D. The foregoing certification is a material representation of fact upon which reliance was or will be placed when entering into this Contract and any transactions with the State. Submission of this certification is a prerequisite for making or entering into any transaction as imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

Section 46. Criminal and Background Checks

- A. The Contractor (referred to in this Section as Provider) shall conduct all criminal history and background checks required by law and the applicable Department policies for each employee or volunteer who has or will have electronic or physical access to children's records or direct contact with children on a regular and continuing basis or any contact when child(ren) is alone or only with Contractor staff in connection with performance of any services or activities pursuant to this Contract ("Covered Personnel") (*see* IC 31-9-2-22.5, Department policies 2.10, 2.11 etc.) The checks will be conducted in the same manner as required for licensed residential child caring institutions, as specified in IC 31-27-3-3, subsections (e), (f), and (g). The applicable laws and Department policies are updated

periodically, and the Provider shall comply with those current as of the time the Provider executes this Contract, initiates a new recruitment process for Covered Personnel, renews this Contract, or reaches the anniversary date of commencement of a multi-year agreement. Upon request, the Department will furnish the Provider with information on updates and any changes in policy or procedure. The current procedure requires the Provider to:

- i. *Verify the identity* of all individuals subject to criminal and background checks;
- ii. *Conduct Child Protection Services (CPS) checks* (for Indiana, send the Department a Request for Child Protection Services History Check; for other states, *see* the Department's website on child welfare policies for web link);
- iii. *Conduct Sex and Violent Offender checks* (*see* the Department's website on child welfare policies to web links for Indiana and out-of-state checks);
- iv. *Register for Fingerprint-Based National and State Checks* (send DCS an Application for Criminal History Background Check); and
- v. *Evaluate Results of Criminal and Background Checks.*

The Department also recommends that the Provider conduct local law enforcement checks.

- B. The Provider shall maintain a record of the results of each check conducted pursuant to this Section. The Provider shall, if requested by the State, provide a copy of that record to the Department or make the record available for inspection by an authorized representative of the Department.
- C. The Provider shall submit documentation satisfactory to the Department that the checks required under paragraph A. of this Section have been completed. With respect to any current employees or volunteers to whom this Section applies, the Provider shall submit the documentation to the Department at the time it transmits this Contract to the State for final approval and signature. The Provider has an ongoing obligation to conduct such checks for employees or volunteers who join the Provider after this Contract begins. The Provider shall submit updates to its documentation as necessary to reflect any checks conducted subsequent to commencement of this Contract.
- D. In order to allow the Department to evaluate the results and to make determinations regarding qualifications, national fingerprint-based criminal history checks relating to employees or volunteers described in paragraph A. of this Section are required to be conducted through the Department's approved fingerprint vendor in accordance with the terms and conditions stated in IC 10-13-3-38.5, 39. The results of the national fingerprint-based criminal history checks will be returned to the Department as an authorized entity to receive the results. The Department will inform the Provider whether the report it receives concerning the subject of a check shows any record that would be grounds for denial of a license to a child placing agency, as provided in IC 31-27-6-3. The Department will not release to the Provider any criminal history record information (CHRI) contained in any report that it receives from the Federal Bureau of Investigation (FBI) through the Indiana

State Police (ISP). If the Provider requests a waiver of criminal history, the Department will inform the Provider of the decision on the waiver request.

- E. In the event a criminal history or background check required herein produces any record concerning the subject of a check that would be a ground for denial of a license to a child placing agency and the Provider chooses to retain such employee or volunteer, that decision may be considered a material breach of this Contract.
- F. The Provider will be responsible for payment of all fees required to be paid to the ISP or the FBI for purposes of conducting any criminal history record check required under this Section, whether the check is conducted by the Provider or by the Department. Any fees paid by the Department on behalf of the Provider may be offset against any claim for payment submitted by the Provider under this Contract.
- G. If there is any pending legislation that subsequently becomes enacted and that modifies or increases the Contractor's duties to conduct criminal and background checks (as set out in this Section) in any manner, the Contractor shall comply with such enacted legislation upon its Effective Date and as soon as the Department notifies the Contractor of the existence and scope of such legislation, which will include information on specifically how the enacted legislation modifies or increases the Contractor's duties under this Section. Moreover, the Department, upon request, will assist the Provider in clarifying the requirements of this Section.

Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that he/she is the Contractor, or that he/she is the properly authorized representative, agent, member or officer of the Contractor, that he/she has not, nor has any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

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SIGNATURE PAGE

In Witness Whereof, Contractor and the State have, through their duly authorized representatives, entered into this Contract. The parties, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below hereby agree to the terms thereof.

Contractor:

(Where Applicable)

By: _____
Printed Name: _____
Title: _____
Date: _____

Attested By: _____

Indiana Department of Child Services:

By: _____
James W. Payne, Director

Date: _____

Department of Administration

By: _____
Mark W. Everson, Commissioner

Date: _____

Approved as to Form and Legality:
***Form approval has been granted by
the Office of the Attorney General
pursuant to IC 4-13-2-14.3(e) on
August 31, 2009.***

FA 09-68

State Budget Agency

Christopher A. Ruhl, Director

Date: _____

This Contract form was prepared by Sheila Elliott Kinney, DCS staff counsel, and completed on August 18, 2009.

This individual Contract
was reviewed and
approved by agency legal
counsel on _____.
Initial _____